IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1881.

No. 1167.

THE COUNTY OF MOULTRIE,
Plaintiff in Error,

vs.

GEORGE B. FAIRFIELD,
Defendant in Error.

BRIEF AND ARGUMENT OF DEFENDANT IN ERROR.

By T. C. MATHER.

SPRINGFIELD, ILL.:
H. W. ROKKER, PRINTER AND BINDER.
1882.

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The validity of two issues of bonds by Moultrie County, Illinois, are controverted in this suit. Plaintiff in error, in his brief, first applies arguments to show the invalidity of the $75,000 issue, then arguments against the $200,000 issue, and finally applies arguments against both in common.

His arguments are ingenious, but, we think, are plainly answerable.

He first insists that Moultrie county, under the 9th and 10th sections of the charter of the Decatur, Sullivan and Mattoon Railroad, could only subscribe, by its Board of Supervisors, $80,000, and that such was its limit of power to aid that company.

The soundness of his rules of construction, and of the maxims and authorities he cites, we do not, of course, question. We only insist they do not apply to, nor fit, the case in hand.

His attempt to *construe* Moultrie county *out of* the provisions of section 9, requires more exercise of ingenuity in dealing with language, than is required to *leave it within* its provisions. He admits, on page 31 of his brief, that *the authority given in section 9. is broad enough to include Moultrie county*, but proceeds to argue, that when the two sections are *taken together*, there is revealed, in the language used by the legislature, an intention of that body not otherwise discernible, that all *other* counties along or near the route, or interested therein, may subscribe or donate, upon a vote of the people, *except Moultrie county*.

If, as is admitted, "the authority given in section 9, is broad enough to include Moultrie county," is it not violative of the rules of construction to search elsewhere through the act for hidden meaning or conjecture with which to restrict this admitted authority? "In the construction of constitutional provisions and statutes, the question is not what was the intention of the framers, but what is the meaning of the words they have used."

Beardstown et al. v. *Virginia et al.* 76 Ill. pp. 40 and 41.

We think sections 9 and 10 are each plain, complete and independent in themselves, and there is no need to go from one to the other in search of conjecture in order to restrict or enlarge the meaning of either.

To do so, is not allowable where the words used in each section have a precise and definite meaning, as is the case with these two.

"The current of authority at the present day is in favor of reading statutes according to the natural and most obvious import of the language, without resorting to subtle and forced constructions for the purpose of either limiting or extending their operation." Ibid. p. 41.

It is not allowable to interpret what has no need of interpretation.

McCluskey v. *Cromwell*, 11 N. Y. 601.

Newell v. *The People*, 3 Seld. 97.

The plain and natural reading, as well as the meaning of section 9, is, that the *several* counties along or near the route of said road, or that are in any way interested therein, may subscribe or make donation thereto, provided there is first a vote of the people thereof authorizing it, as provided in the remainder of the section.

This plainly includes Moultrie county. And the section contains no exceptions. Plaintiff in error admits this much, (p. 31 of his brief.)

Section 10 following, simply seeks to, and does, empower the board of supervisors of Moultrie county, without consulting the voters, to subscribe an amount not exceeding $80,000.

The voters may still, under section 9, just like in any other county along the route, call an election to authorize a donation or subscription of any amount their petition and election notices mention.

This is the natural and plain meaning, and requires no forced or subtle construction of the two sections together.

This reading of them also produces perfect harmony.

To interpret them as insisted upon by plaintiff in error, requires an exception made of the voters of Moultrie county, entirely ignoring them, whereas the voters of any other county along the route can subscribe as much aid to the enterprise beyond $80,000 as they might choose.

Why make this exception in Moultrie county?

The very fact that the legislature did limit the amount that the board might subscribe without consulting the voters, is an indication that it was intended the voters might still, if they deemed the interests of their county demanded it, enlarge the amount of aid to be rendered, by calling an election in the usual way, under section 9.

But, suppose it were conceded that the two sections do not read as plain as we insist, and that the meaning of the legislature as contained in them was *doubtful*. And that council for plaintiff in error regards them as doubtful, as to their true meaning upon the point in controversy, is evidenced by his subtle and labored arguments in attempting to convince the court what that meaning is, when the two sections are subjected to the rules of construction.

If *doubtful*, the adjudged cases settle the question in favor of defendant in error.

The law being, that where it is doubtful whether the corporation has power to issue bonds, yet if the municipal authorities have construed their charter as giving the power, and the bonds have been issued and are in the hands of *bona fide* purchasers for value, the court will adopt the municipal construction.

Meyer v. *City of Muscatine*, 1 Wall. 391.
Van Hostrup v. *Madison City*, 1 Wall. 297.
James v. *Milwaukee*, 16 Wall. 162.
Adams v. *Lawrence County*, 2 Pitts. R. 64.
Woodhull v. *Beaver County*, 3 Wall., Jr. 278.

That defendant in error is a *bona fide* purchaser, see p. 16, Transcript.

The case of *Moran* v. *The Commissioners*, (intended to be cited by plaintiff in error in 2 Black, p. 722) hardly supports the construction claimed. Counsel for plaintiff in error quotes only a *piece* of a sentence. We respectfully urge the court's attention to the entire sentence, and case, as qualifying the meaning of the particular words quoted.

The application of the separate section of the constitution of 1870, made by plaintiff in error on page 35 of his brief, proceeds upon the theory, of course, that his construction of sections 9 and 10 is correct.

If he is wrong in his construction of them, then his application of the constitutional provision fails.

Plaintiff in error next attempts to show from the special findings of the trial court, and *a portion* of the records of Moultrie county, that even if section 9 authorized a vote for additional aid, that still there was no vote had in favor of the *Decatur, Sullivan*

and Mattoon Railroad, and that, therefore, these bonds issued to that road, were forbidden by the separate section of the constitution, and not saved by its proviso.

This whole argument is based upon an inadvertent misnomer of the road in question as contained in some of the election papers, and afterwards carried so into the county records.

It affords counsel for plaintiff in error an opportunity to indulge in a double assumption—first, that the Decatur, Sullivan and Mattoon Railroad was *not, in fact*, the subject of the vote had November 2, 1869, and secondly, that another company which he finds an old charter for, as far back as 1861, and which the record does not show to ever have been built, nor had an existence otherwise than on paper, called the Mattoon and Decatur road, *was the one in fact voted for* at that election.

This court will observe that the trial court made no special finding as to what road *was in fact voted for* on November 2, 1869. The court found simply that on that day an election was held in Moultrie county pursuant to the petition and election notices, set out on pages 17 and 18 of the Transcript.

The petition and notices, as matter of fact, designate the road voted for, the "Mattoon, Sullivan and Decatur Railroad," so that, on that day, under the charter, the *Decatur, Sullivan and Mattoon Railroad*, was not voted for *by proper name*.

But, if it is important to decide it at all, the question still presents itself, to determine from the records specially found by the court to exist relative to this election, *what* railroad *was, in fact*, voted for by the electors on that day.

Was it the D. S. and M. R. R., voted for by a misnomer, or was it the Mattoon and Decatur Railroad which had an existence merely in the private law of 1861?

We insist, the records when taken together as a whole, put the matter beyond any controversy.

They show conclusively that it was the D. S. and M. R. R., but that the words composing its title were transposed, merely, in the petition and election notices.

In both the petition and notices there are too many words, (3), to designate the M. and D. R. R., and when it comes to the abstract of votes on page 19 of Transcript, the title is abbreviated, but it could still not be the Mattoon and Decatur Railroad, for the same reason that plaintiff in error argues that the D. S. and M. R. R. is not meant in the petition and notices, viz, because of the transposition of words.

When we turn to the proceedings of the county board, and examine the recitals of the resolutions offered, it is very clear *what* road had been, *in fact*, voted for on November 2, 1869, as *then* understood by the representative people of the county. (See pages 14 and 15 of the Transcript.) Afterwards the bonds were issued by order of the board and containing recitals to the same effect, and correctly entitling the road as the "D. S. and M." (See p. 16 of Transcript.)

The same thing is shown by the contract between the "D. S. and M. R. R. Co.," and the contractors, set forth on pages 20 and 21 of Transcript. On page 21 the company pledges the 75,000 and the 80,000 issues, making 155,000 to the contractors. Why should the "D. S. and M. Company," be pledging, unopposed to *its* contractors, bonds which plaintiff in error argues had been voted to another road, viz, the "M. and D." R. R.?

The *theory* of plaintiff in error, in this respect, is simply absurd and untenable. We insist the law is well settled, that as against a *bona fide* purchaser of these bonds, the county cannot be permitted to contradict its own record and bond recitals. The recitals of this *identical record* has once before been before this court, and the decision was that the county was estopped from contradicting them, where the bonds were in innocent hands.

The County of Moultrie v. *Rockingham Bank*, 2 Otto. pp. 633 to 637.

The whole reliance of plaintiff in error, to avoid the legal effect of the recitals in these bonds, and resolutions of the county board, is based upon his two theories, one of law and one of fact, viz: First, that the county had no power under section 9; and secondly, that if it had, still it voted on Nov. 2, 1869, for the *Mattoon and Decatur Railroad*, instead of for the D. S. and M. R. R.

We insist that his legal construction of section 9 is untenable, and that he cannot successfully deduce from the record the *fact* that the vote on Nov. 2, 1869, was to the "M. and D." R. R.

If we are correct upon this, of course his whole arguments, surrounding these two points, are without force.

"Where the name of a corporation consists of several words, the transposition, omission, or alteration of some of them, may not be regarded as important, if it is evident which corporation is intended."

Chadsey v. *McCreery*, 27 Ill., 253.

In fact, the law is, if these bonds had been voted to the M. and D. R. R., as plaintiff in error argues they were, and were afterwards delivered to the D. S. and M. R. R. wrongfully, if defendant

in error is an innocent purchaser, he would be unaffected thereby.

Town of Prairie v. *Lloyd*, 97 Ill., p. 181.

But, as conclusive of this whole question, the law is, that a *bona fide* purchaser need examine nothing but the charter and the recitals in his bonds. If there is power in the 9th section of this charter to Moultrie county to donate this $75,000 issue, defendent. in error, being as he is, a *bona fide* perchaser, is fully protected That he need not examine the county records.

Nicoly v. *St. Clair county*, 3 Dil., C. C. 170.

"A *bona fide* purchaser of one of these bonds is not bound to look into the records of the County Court which made the subscription, and is not chargeable with constructive notice of their contents, and hence the fact that the order shows that the subscription by the County Court of St. Clair County was not to the capital stock of the Tebo and Neosha R. R. Co., but to * * * is no defence, provided the plaintiff is a holder of the bonds for value, without actual notice of this fact."

Moran v. *The Commissioners*, 2 Black, p. 722.
Lynde v. *The County*, 16 Wall. 13.
Coloma v. *Eaves*, 2 Otto, p. 491.

Plaintiff in error next argues that the issue of the $200,000 of bonds to the B. and O. River R. R. is invalid for the reasons: First, that the county is forbidden by the 8th section of the 9th article of the constitution of 1870 to levy taxes exceeding seventy-five cents on the hundred dollars, except to pay indebtedness existing at the adoption of the constitution, and he argues that these bonds were not issued to pay such an indebtedness. Secondly, because the question was not voted

upon of levying taxes to pay the bonds when they were voted. His argument in support of his first proposition against these bonds is that they were voted as a donation merely, and upon conditions which were not performed until after the adoption of the constitution, and that consequently they could not become a debt until the conditions were performed and they were delivered, which was not until after the constitution took effect, and so, as there would be no power to levy taxes under the assessed valuation of this county to pay interest or principal thereof, the bonds would be a nullity for want of power to pay.

We think this whole proposition, supported by the various arguments and authorities, is fully answered by the facts in the case, and by decisions of the Supreme Court of Illinois.

The fact recited in the bonds, page 11 of Transcript, that they were authorized by an election, held November 2, 1869, under the B. and O. River R. R. charter, is not disputed.

The Supreme Court of Illinois in *Chiniquy* v. *The People*, 78 Ill., 572, has held that this provision of the constitution does not apply to the case of a tax levied to pay interest on bonds voted before the adoption of the constitution, although the subscription and issue of the bonds occured after its adoption.

To avoid the force of this decision in the premises, plaintiff in error contends that there is a distinction between a subscription and a donation.

Upon principle, we ask, what distinction could there be where, in either case, nothing but a *bare vote* was had before the adoption of the constitution?

In the Illinois decision cited above, it appears no subscription was made before the constitution took effect.

What then was there more binding in that case than if the vote had been for a donation?

The Illinois Supreme Court hold substantially that a mere vote, had prior to the constitution, creates a debt in the sense of that fundamental instrument.

But we must superadd to this view of the case the fact that the Illinois Supreme Court has brushed away all distinction between donations and subscriptions to railroads, and this court has followed that ruling.

Chicago and Iowa R. R. Co. v. *Pinckney*, 74 Ill. 277.

Middleport v. *Ætna Life*, 82 Ill. 562.

Lippencott v. *Pana*, 92 Ill. 24.

Fairfield v. *Gallatin County*, 10 Otto, pp. 50 and 51.

Nor can plaintiff in error insist that the vote was any the less a debt because there were conditions to be performed after the adoption of the constitution.

If the vote was had prior to the adoption of the constitution, then the bonds were authorized whenever the conditions were complied with, whether after or before the constitution took effect. The constitution in such case would have nothing to do with it.

Post v. *Randolph County*, 5 Otto, 513.

C. and I. R. R. Co. v. *Pinckney*, 74 Ill. 279.

As to the $75,000 issue, to which plaintiff in error also applies this argument, there was an acceptance of it prior to the adoption of the constitution, and a dealing with it, or upon the faith and credit of it, between the railroad company and its contractors. (See the contract dated April 15, 1870, page 21 of Transcript.)

The object of certain provisions in the constitution of 1870 was simply to prevent the incurring of any more liability by municipalities to railroads and private corporations. The purpose was not to cut off the perfecting of aids, whether subscriptions or donations, which had already, at the adoption of the constitution, been authorized by a vote under some law authorizing the vote.

We have reference to the separate section, entitled " Municipal Subscriptions to Railroads or Private Corportions "—and section 12 of Article IX of the constitution.

The prohibitory effect of the two foregoing provisions is carefully guarded by express language against operating upon cases where bonds had simply been authorized by a vote prior to its adoption. Of course there were a great many cases where such votes had been prior to July 2d, 1870, but the bonds could not issue until certain conditions of the vote had been complied with, which, in numerous instances, could not be performed from the very nature of things, until after the constitution went into effect. The saving clauses in both these prohibitory provisions were intended to protect the future issue of bonds under just such circumstances.

It will be seen that the saving clause to section 12 of Article IX makes no reference to, nor distinction between, donation or subscription bonds. It is broad enough to permit the issue of either kind in all cases where there had been en antecedent vote.

We may now say the same as to the *separate section*, above cited, since the Supreme Court of Illinois has decided that the word *subscriptions*, in the latter clause thereof, means *donations* also. To give proper effect to the decision in *Chiniquy* v. *The People*, cited above in 78 Ills., counsel for plaintiff in error must admit that, in

case of a vote for *subscription* bonds, section 8 of Article IX does apply. This is so even where the act of manual subscription, not and the issue of the bonds, both took place *after* the adoption of the constitution.

With this distinction thus obliterated from section 12 of Article IX, and from the *separate section*, of the constitution of 1870, as it has been by the decisions already cited, would it not be an anomoly in applying the rules of construction, to hold that such distinction, nevertheless, remains in applying the prohibitory provision of another provision of the same constitution, viz: section 8 of Article IX, to the two classes of bonds?

The Supreme Court of Illinois, in the case of *C. and I. R. R. Co.* v. *Pinckney*, 74 Ills., page 279, in overruling this distinction, claimed by plaintiff in error to exist in the constitution of 1870, between donation and subscription bonds, says: "We have no doubt, at the time the section was framed, there were then in the State quite as many donations voted as there were subscriptions to stock in any other manner, and if a necessity or reason existed to protect a subscription, there was also the same reason and demand to protect a donation, and we entertain no doubt it was the intention of the framers of the constitution, by adding the proviso to the section cited *supra*, to place subscriptions and donations on the same footing."

We insist it would be absurd to thus obliterate all distinction between two classes of bonds, in construing one provision of the constitution, where the question presents itself as fully as in another provision of the same instrument, and yet to construe that other provision so as to restore the distinction, without there being either logic or reason to call for it.

It would cause one provision of the constitution to counteract another provision, and thus produce a dead-lock as to certain subjects of constitutional legislation.

If the courts have construed certain provisions of the constitution so as to permit donation bonds to issue after its adoption, under like circumstances as subscription bonds, is it then logical, or reasonable, to call upon the courts to construe another provision of that same constitution in such a way as to render nugatory the donation bonds, by prohibiting a tax to pay them with? This is the position assumed in argument by plaintiff in error, and we respectfully submit if it can be sustained.

The remaining point urged against the validity of the $200,000 issue, viz: that no tax was voted at the time the bonds were, wherewith to pay them, as required by the charter of the B. and O. River R. R., has already been settled by the Supreme Court of Illinois in construing this very charter, and sustaining bonds issued under it as a donation. The court holds that as to donation bonds there is no provision of the act requiring a tax to be voted for. That the people in voting to donate the bonds *impliedly* voted a tax to pay them, when it became necessary, and that this was all the act required.

Respectfully submitted, J. M. Cullom

T. C. MATHER,

Attorney for Defendant in Error.